

Office of Personnel Management

§ 575.311

group retention incentive with or without a service agreement).

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§ 575.310 Service agreement requirements.

(a) Before paying a retention incentive, an agency must require an employee, including each employee covered by a group retention incentive authorization and any employee who may receive a higher retention incentive as a result of an approved waiver of the maximum limit on the amount of a retention incentive under § 575.309(e), to sign a written service agreement to complete a specified period of employment with the agency (or successor agency in the event of a transfer of function). An authorized agency official must determine the length of a service period. A written service agreement is not required under the condition described in paragraph (f) of this section.

(b) The service agreement must include the commencement and termination dates of the required service period. The service period must begin on the first day of a pay period and end on the last day of a pay period.

(c) The service agreement must specify the retention incentive percentage rate established under § 575.309(a); whether the incentive will be paid in installments or in a lump-sum payment upon completion of the service period provided in the service agreement; whether any installment payments will be paid at less than the full retention incentive percentage rate established under § 575.309(a), with the accrued but unpaid incentive payment being paid in a lump sum upon completion of the full service period required by the service agreement under § 575.309(c)(2); and the timing of incentive payments.

(d) The service agreement must include the conditions under which the agency must terminate the service agreement before the employee completes the agreed-upon service period (*i.e.*, if an employee is demoted or separated for cause, receives a rating of record of less than "Fully Successful" or equivalent, or otherwise fails to fulfill the terms of the service agreement)

under § 575.311. The service agreement must specify the effect of a termination, including the conditions under which the agency will pay an additional retention incentive payment for partially completed service under § 575.311(e) and (f).

(e) The service agreement may include any other terms or conditions that, if violated, will result in a termination of the service agreement under § 575.311(b). For example, the service agreement may specify the employee's work schedule, type of position, and the duties he or she is expected to perform. In addition, the service agreement may address the extent to which periods of time on detail, in a nonpay status, or in paid leave status are creditable towards the completion of the service period.

(f) A written service agreement is not required if the agency—

(1) Pays the retention incentive in bi-weekly installments; and

(2) Sets each biweekly installment payment at the full retention incentive percentage rate established for the employee under § 575.309(a).

[70 FR 25747, May 13, 2005, as amended at 70 FR 74996, Dec. 19, 2005]

§ 575.311 Continuation, reduction, and termination of retention incentives.

(a) An authorized agency official may unilaterally terminate a retention incentive service agreement based solely on the management needs of the agency. For example, an agency may terminate a service agreement when the employee's position is affected by a reduction in force, when there are insufficient funds to continue the planned retention incentive payments, when conditions no longer warrant payment at the level originally approved or at all, or when the agency assigns the employee to a different position (if the different position is not within the terms of the service agreement).

(b) An authorized agency official must terminate a retention incentive service agreement if the employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), if the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5

CFR part 430) of less than “Fully Successful” or equivalent, or if the employee otherwise fails to fulfill the terms of the service agreement.

(c) The termination of a service agreement is not grievable or appealable.

(d) The agency must notify an employee in writing when it terminates a retention incentive service agreement.

(e) If an authorized agency official terminates a service agreement under paragraph (a) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(f) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(g)(1) For retention incentives that are paid when no service agreement is required under §575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An agency must reduce or terminate a retention incentive authorization when no service agreement is required whenever payment at the level originally approved is no longer warranted. An agency may consider the following factors in determining

whether to reduce or terminate a retention incentive—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group or category of employees);

(iii) Whether the agency’s need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all);

(iv) Whether budgetary considerations make it difficult to continue payment at the level originally approved (or at all); or

(v) Other supporting factors.

(4) An agency must terminate a retention incentive authorization when no service agreement is required if the employee is demoted or separated for cause (*i.e.*, for unacceptable performance or conduct), the employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than “Fully Successful” or equivalent, or the agency assigns the employee to a different position.

(5) Termination or reduction of a retention incentive is not grievable or appealable under any law or regulation.

(6) If an agency reduces or terminates a retention incentive under paragraph (g) of this section, the agency must notify the employee in writing. The employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice is provided or until the date of separation, if sooner.

EFFECTIVE DATE NOTE: At 72 FR 67840, Dec. 3, 2007, §575.311 was revised, effective Jan. 2, 2008. For the convenience of the user, the revised text is set forth as follows:

§575.311 Continuation, reduction, and termination of retention incentives.

(a)(1) An authorized agency official must terminate a retention incentive service agreement when conditions change such that

the original determination to pay the retention incentive no longer applies (e.g., when the agency assigns the employee to a different position that is not within the terms of the service agreement) or when payment is no longer warranted after considering factors such as—

(i) Whether a retention incentive is needed to retain the employee (or group of employees),

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group of employees), or

(iii) Whether the agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue paying a retention incentive.

(2) An authorized agency official may terminate unilaterally a retention incentive service agreement based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a service agreement when there are insufficient funds to continue the planned retention incentive payments.

(b) An authorized agency official must terminate a retention incentive service agreement when—

(1) The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct);

(2) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than "Fully Successful" or equivalent; or

(3) The employee otherwise fails to fulfill the terms of the service agreement.

(c) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain any retention incentive payments that are attributable to completed service and to receive any portion of a retention incentive payment owed by the agency for completed service.

(d) If an authorized agency official terminates a service agreement under paragraph (b) of this section, the employee is entitled to retain retention incentive payments previously paid by the agency that are attributable to the completed portion of the service period. If the employee received retention incentive payments that are less than the amount that would be attributable to the completed portion of the service period, the agency is not obligated to pay the employee the amount attributable to completed service, unless the agency agreed to such payment under the terms of the retention incentive service agreement.

(e) To determine the amount of retention incentive payments that may be owed to an employee for completed service under paragraphs (c) and (d) of this section, multiply the total rate of basic pay the employee earned during the completed portion of the service period by the retention incentive percentage rate established for the employee under §575.309(a) and subtract the amount of retention incentive payments already paid to the employee from this product. The difference is the amount owed to the employee for completed service.

(f)(1) For retention incentives that are paid when no service agreement is required under §575.310(f), an agency must review each determination to pay the incentive at least annually to determine whether payment is still warranted. An authorized agency official must certify this determination in writing.

(2) An agency may continue paying a retention incentive to an employee when no service agreement is required as long as the conditions giving rise to the original determination to pay the incentive still exist.

(3) An authorized agency official must reduce or terminate a retention incentive authorization when no service agreement is required whenever conditions change such that the original determination to pay the retention incentive no longer applies (e.g., when the agency assigns the employee to a different position that is not within the terms of the original determination) or when payment is no longer warranted at the level originally approved or at all after considering factors such as—

(i) Whether a lesser amount (or none at all) would be sufficient to retain the employee (or group or category of employees);

(ii) Whether labor-market factors make it more likely (or reasonably likely) to recruit a candidate with competencies similar to those possessed by the employee (or group or category of employees); or

(iii) Whether the agency's need for the services of the employee (or group or category of employees) has been reduced to a level that makes it unnecessary to continue payment at the level originally approved (or at all).

(4) An authorized agency official may terminate unilaterally a retention incentive authorization when no service agreement is required based solely on the management needs of the agency, even if the conditions giving rise to the original determination to pay the incentive still exist. For example, an agency may terminate a retention incentive when there are insufficient funds to continue the planned retention incentive payments.

(5) An authorized agency official must terminate a retention incentive authorization when no service agreement is required when—

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(i) The employee is demoted or separated for cause (i.e., for unacceptable performance or conduct), or

(ii) The employee receives a rating of record (or an official performance appraisal or evaluation under a system not covered by 5 U.S.C. chapter 43 or 5 CFR part 430) of less than "Fully Successful" or equivalent.

(g) The termination of a retention incentive service agreement or the reduction or termination of a retention incentive under this section is not grievable or appealable.

(h) If an agency terminates a retention incentive service agreement or reduces or terminates a retention incentive paid without a service agreement under this section, the agency must notify the employee in writing. When a retention incentive is terminated under paragraph (f) of this section, the employee is entitled to receive any scheduled incentive payments through the end of the pay period in which the written notice is provided or until the date of separation, if sooner.

§ 575.312 Internal monitoring requirements and revocation or suspension of authority.

(a) Each agency must monitor the use of retention incentives to ensure that its retention incentive plan and the payment of retention incentives are consistent with the requirements and criteria established under 5 U.S.C. 5754 and this subpart.

(b) When OPM finds that an agency is not paying retention incentives consistent with the agency's retention incentive plan and the criteria established under 5 U.S.C. 5754 or this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

(1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying a retention incentive to such employees; or

(2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying a retention incentive to such employees.

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§ 575.313 Records and reports.

(a) Each agency must keep a record of each determination to pay a retention incentive and make such records available for review upon OPM's request.

(b) By March 31 in each of the years 2006 through 2010, each agency must submit a written report to OPM on the use of the retention incentive authority within the agency during the previous calendar year for use in compiling an OPM report to Congress, as required by section 101(c) of Public Law 108–411. Each agency report must include—

(1) A description of how the authority to pay retention incentives was used in the agency during the previous calendar year;

(2) The number and dollar amount of retention incentives paid during the previous calendar year to individuals by occupational series and grade, pay level, or other pay classification; and

(3) Other information, records, reports, and data as OPM may require.

§ 575.314 Retention allowances in effect before May 1, 2005.

This subpart does not apply to a retention allowance authorized under 5 U.S.C. 5754 and 5 CFR part 575, subpart C, before May 1, 2005. Such allowances must continue to be paid until the retention allowance is reauthorized or terminated or until April 30, 2006, whichever comes first, subject to the regulations applicable to retention allowances before May 1, 2005. (See 5 CFR part 575 and part 530, subpart B, contained in the 5 CFR, parts 1 to 699, edition revised as of January 1, 2005.)

§ 575.315 Retention incentives for employees likely to leave for a different position in the Federal service.

(a) *Authority.* (1) An agency in its sole and exclusive discretion, subject only to OPM review and oversight, may approve a retention incentive for an individual employee under the conditions prescribed in this section when the agency determines that—

(i) Given the agency's mission requirements and employee's competencies, the agency has a special need for the employee's services that